

**CITY OF BRIGHTON, COLORADO
REGULAR SESSION
FEBRUARY 18, 2014
7:00 P.M.**

***THERE IS A 5-MINUTE
LIMIT TO ADDRESS
COUNCIL.**

**MAYOR
MAYOR PRO-TEM

COUNCIL MEMBERS**

- **RICHARD N. MCLEAN**
- **KIRBY WALLIN**
- **LYNN BACA**
- **REX BELL**
- **J.W. EDWARDS**
- **MARK HUMBERT**
- **JOAN KNISS**
- **KEN KREUTZER**
- **CYNTHIA A. MARTINEZ**

1. CALL TO ORDER

- A. Pledge of Allegiance to the American Flag.
- B. Roll Call.

2. CONSENT AGENDA

- A. Approval of the January 21, 2014 City Council Minutes.

3. APPROVAL OF REGULAR AGENDA (Council may take a short break between 8:30–9:00 p.m.)

4. CEREMONIES

- A. Presentation by Representative Kevin Priola.
- B. Brighton Employees Charities Recognition.

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)

6. ORDINANCES FOR INITIAL CONSIDERATION

- A. An Ordinance of the City Council of the City of Brighton, Colorado Amending the Following Sections of the Brighton Municipal Code: Section 2-36-30, Created; Membership (Relating to Alternates on the Planning Commission); Section 2-36-50, Terms of Office and Compensation (Relating to Alternates on the Planning Commission); Section 2-66-10 Establishment; Membership (Relating to the Historic Preservation Commission); Specifically Adding an Additional Alternate to the Planning Commission and Exempting the Professional Members of the Historic Preservation Commission from the Two Year Term Limitation; and Setting Forth Other Details Related Thereto.

7. ORDINANCES FOR FINAL CONSIDERATION

8. RESOLUTIONS

- A. A Resolution of the City Council of the City of Brighton, Colorado Authorizing the Paths to Parks Grant Application to Great Outdoors Colorado in the Amount not to exceed Nine Hundred Fifty Thousand Dollars (\$950,000.00) for the “CFRT (Colorado Front Range Trail) from E-470 to Brighton” Project; and Authorizing the City Manager to Sign the Grant Application.

9. UTILITIES BUSINESS ITEMS

Ordinances

- A. An Ordinance of the City Council of the City of Brighton, Colorado Amending Section 17-12-20 Words Terms and Phrases and Section 17-16-200 FC – Flood Plain Control District of Chapter 17. Land Use and Development Code, of the Brighton Municipal Code; Correcting and Adding Definitions; Adding Standards and Requirements for Applications for Flood Plain Permits and the Review Thereof; Adding to and Amending Certain Flood Plain Regulations; Designating Critical Facilities; Setting Requirements for Properties Removed from the Flood Plain by Fill and Recreational Vehicles as Required by the Colorado Department of Natural Resources, Water Conservation Board's Rules and Regulations for Regulatory Floodplains in Colorado; and Setting Forth Other Details Related Thereto. **(Final Reading)**

Resolutions

- B. A Resolution of the City Council of the City of Brighton, Colorado, to Find and Acknowledge that Good Cause Exists and that it is in the Best Interest of the City to Waive the Request for Proposal Process and Approve a Professional Services Agreement with White Sands Water Engineers, Inc. for the Provision of Water Related Engineering Services to the City; Setting Forth the Fees for said Services; Authorizing the Mayor to Execute said Agreement on Behalf of the City; and Setting Forth Other Details Related Thereto.

10. GENERAL BUSINESS

- A. Schedule a Special Study Session on March 3, 2014 at 6:00 p.m. to continue the City Council Advance.

11. REPORTS

- A. By the Mayor
B. By Department Heads
C. By the City Attorney
D. By the City Manager

12. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

13. EXECUTIVE SESSION

For a Conference with the City Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions under C.R.S. Section 24-6-402(4)(b) regarding Oil and Gas.

14. ADJOURNMENT

City Council Agenda Item 2A

**MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL
FOR THE CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF
COLORADO, HELD ON JANUARY 21, 2014.**

1. CALL TO ORDER

Mayor McLean called the meeting to order at 7:00 p.m.

A. Pledge of Allegiance to the American Flag.

Boy Scout Zane DeLuccie led the recitation of the Pledge of Allegiance to the American Flag.

B. Roll Call.

Council present: Mayor McLean, Mayor Pro Tem Wallin, Councilmembers Baca, Bell, Edwards, Humbert, Kniss, Kreutzer and Martinez.

2. CONSENT AGENDA

A. Approval of the January 7, 2014 Outgoing City Council Minutes.

Motion by Mayor Pro Tem Wallin, second by Councilmember Martinez to approve Item 2A.

Voting aye: Mayor McLean, Mayor Pro Tem Wallin, Councilmembers Baca, Bell, Edwards and Martinez.

Motion passes.

B. Approval of the January 7, 2014 Incoming City Council Minutes.

Motion by Councilmember Edwards, second by Councilmember Bell to approve Item 2B.

Voting aye: All present.

3. APPROVAL OF REGULAR AGENDA (Council will take a short break between 8:30–9:00 p.m.)

City Manager Manuel Esquibel explained that the Agenda was corrected to change January 23, 2013 to January 23, 2014 under Item 10A.

Motion by Councilmember Martinez to approve the Regular Agenda as corrected, **second by Councilmember Kreutzer.**

Voting aye: All present.

4. CEREMONIES

A. Festival of Lights Recognition.

City Manager Esquibel introduced Public Information Manager Kristen Chernosky.

Public Information Manager Kristen Chernosky introduced the Special Events Staff Gary Montoya, Susie O'Connor, and David Gallegos who worked on the Festival of Lights with 300 volunteers.

Mayor McLean and **City Council** thanked everyone for all for their hard work making the Festival of Lights a success.

B. Introduction of New Employees by Human Resources Director Karen Borkowski Surine.

Human Resources Director Karen Borkowski Surine introduced Joshua Garcia, Armory Tech Director and gave a brief history of his background.

Mayor McLean and **City Council** welcomed the new employee to the City of Brighton.

C. A Resolution of the City Council of the City of Brighton, Colorado, Appointing Official Representatives and Alternates of the City Council to Certain Boards and Commissions.

Mayor McLean read the title of the Resolution and all of the appointments into the record and announced that the representative on the Cultural Arts Commission will be changed from Rex Bell to Joan Kniss.

Motion by Mayor Pro Tem Wallin to approve Resolution 2014-01 the title of which as read by Mayor McLean, **second by Councilmember Humbert.**

Voting aye: All present.

D. Swear in Councilmembers on Boards and Commissions.

City Clerk Natalie Hoel swore in the City Council on various Boards and Commissions appointed by Resolution 2014-01. (The Brighton Municipal Code requires them to take an oath in order to undertake the duties required by the various Boards and Commissions.)

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)

Jose Lugo, 13721 CR 2, Brighton. Mr. Lugo expressed his concern regarding an oil and gas well that will be placed near Baseline Road and could affect the quality of life for residents in the area. Mr. Lugo was referred to Assistant City Manager of Development Marv Falconburg to get information regarding the City's interest in the proposed well site.

Dave Swanson, 539 Longhurst, Brighton. Mr. Swanson asked for an update on the process to amend the Code to allow bees in the city limits of Brighton. Mr. Swanson was referred to Assistant City Manager of Development Marv Falconburg to receive an update on the Code amendment. Mr. Swanson also asked for Council's consideration to have a bee hive at the historic Bromley/Hishinuma Farm.

6. PUBLIC HEARINGS

7. ORDINANCES FOR FINAL CONSIDERATION

8. RESOLUTIONS

A. A Resolution of the City Council of the City of Brighton, Colorado, Authorizing the Signing of a Mini-Grant Agreement with Great Outdoors Colorado ("GOCO"), in the Amount not

to Exceed Thirty-Three Thousand Dollars (\$33,000.00), for the Benedict Park Skate Spot; and Authorizing the City Manager to Sign and Execute the Grant Agreement.

Mayor McLean read the title of the Resolution into the record.

City Manager Esquibel introduced Parks and Recreation Director Gary Wardle.

Parks and Recreation Director Gary Wardle explained that this project will replace the old skate park at Benedict Park. The City applied for a Great Outdoors Colorado (GOCO) mini grant which is only allowed to be up to \$60,000.00. The City has been working with the contractor to get the skate park total project amount down to \$60,000.00. GOCO has approved the budget so City Council will need to approve the grant contract so the project can move forward. The Skate Spot concrete work will cost \$58,900.00 and the City will contribute \$1,100.00 to have the Mile High Youth Corps do the landscape planting around the site which is one of the requirements of the grant. Director Wardle answered questions from Council regarding:

- Confirming that the approval of the grant agreement indicates that the grant has been awarded.
- The begin date for the project.
- The City providing matching funds in the amount of \$27,000.00.
- The new Skate Spot being placed in the same location as the old skate park.

Motion by Councilmember Humbert to approve Resolution 2014-02 the title of which as read by Mayor McLean, **second by Councilmember Bell.**

Voting aye: All present.

B. A Resolution of the City Council of the City of Brighton, Colorado, Accepting the Bid of Colorado Designsapes, Inc. and Awarding the Contract for the Benedict Park Skate Spot, Bid #13-017, in an Amount not to exceed One Hundred Thousand Sixty Five Dollars (\$100,065.00), and Authorizing the Mayor to Sign the Contract on Behalf of the City and the City Clerk to Attest Thereto.

Mayor McLean read the title of the Resolution into the record.

Parks and Recreation Director Gary Wardle explained that this Resolution will approve the contract with Colorado Designsapes in the amount of \$100,065.00 for the Skate Spot in Benedict Park. This project is funded in part by a Great Outdoors Colorado (GOCO) grant. The funds for this project are available in the 2014 budget. \$60,000.00 will be used from the grant proceeds and the additional \$41,000.00 will be provided by the City to finish the landscaping, irrigation and benches. The City will contribute \$1,100.00 for the Mile High Youth Corps. This project was originally bid with the Splash Pad last year but because the grant had not been approved, it was not part of the original contract with Colorado Designsapes. Because the cost was over \$60,000.00 staff had to negotiate with the contractor to get the cost below that amount. The construction on the project will begin in February and should be completed by the end of May. Director Wardle answered questions from Council regarding:

- The parking lot construction being completed by the end of May.
- Any other bids for this project

Motion by Councilmember Martinez to approve Resolution 2014-03 the title of which as read by Mayor McLean, **second by Councilmember Edwards.**

Voting aye: All present.

C. A Resolution of the City Council of the City of Brighton, Colorado, Authorizing the Submittal of an Open Space Mini-Grant Application to Adams County Open Space in the Amount not to exceed Five Thousand Dollars (\$5,000.00), for the “Veterans Memorial at Veterans Park” Project; and Authorizing the City Manager to Sign the Grant Application.

Mayor McLean read the title of the Resolution into the record.

Parks and Recreation Director Gary Wardle explained that the City can apply for three (3) Adams County Open Space grants twice per year, one grant cycle in February and the other in September. One of the grants is a mini grant that can be no more than \$5,000.00. This mini grant is for the renovation of the Veteran’s Memorial at Veteran’s Park. Zane DeLuccie decided to do this renovation for his Eagle Scout project.

Boy Scout Zane DeLuccie explained that in 2006 his nineteen year old brother joined the Marines and was away for four (4) years which affected Zane’s life. Zane wanted to find a way to show how thankful he was when his brother returned and to honor the sacrifices of the servicemen and servicewomen and their families, and this project is a good way to do that. The existing monument is at Veteran’s Park on Highway 7. The total amount for the project is approximately \$42,000.00, but with donations, labor, materials and pledges, the cost is now \$9,000.00. The current memorial is a boulder that is sinking into the ground with writing on it that has faded over the last thirty (30) or forty (40) years. The boulder will be moved and a new memorial will be added to it. The new memorial will have five (5) sides to represent each branch of the military with five (5) dedication plaques in the center. Zane is asking for approval of the grant which would give necessary funding for this project.

Director Wardle explained that this project will be presented to Adams County at the end of February and the contract should come back to Council in May which will allow the project to begin by June 3, 2014 and be completed by June 24, 2014 or earlier.

Motion by Councilmember Kreutzer to approve Resolution 2014-04 the title of which as read by Mayor McLean, **second by Councilmember Martinez.**

Members of Council applauded Zane for bringing this project before the Council, for his dedication to the military and for his desire to upgrade this important memorial in the City.

Voting aye: All present.

D. A Resolution of the City Council of the City of Brighton, Colorado Authorizing the Submittal of an Open Space Passive Grant Application to Adams County Open Space in the Amount not to exceed Four Hundred Seventeen Thousand Three Hundred Dollars (\$417,300.00) for the Bromley-Hishinuma Historic Farm Landscape Project; and Authorizing the City Manager to Sign the Grant Application.

Mayor McLean read the title of the Resolution into the record.

Parks and Recreation Director Gary Wardle explained that this grant application is for an Adams County Open Space grant to landscape the Bromley/Hishinuma Farm. The project will include bringing all of the utilities onto the site, reconstructing the entrance drive with trees and grasses, plans for plazas between the barn and house for demonstrations as part of the “living farm”, parking lots, demonstration gardens and cutting gardens. All of the landscaping will be done as it was in the 1880’s and 1890’s when Mr. Bromley lived there. The Master Plan in 2006 had a concept for what the landscape would look like. There is \$40,000.00 in the 2014 budget to complete the final Master Plan for the landscaping, and for completion of the construction drawings. Anticipating that this grant will be completed in 2015 the City’s portion will be budgeted in the 2015 budget. The total project cost is

\$695,500.00. This is a 60% grant so the grant dollars are \$417,300.00 and the City will contribute \$278,200.00 to be budgeted in 2015. Director Wardle answered questions from Council regarding:

- The date construction will begin on this project.

Motion by Councilmember Bell to approve Resolution 2014-05 the title of which as read by Mayor McLean, **second by Councilmember Humbert.**

Voting aye: All present.

E. A Resolution of the City Council of the City of Brighton, Colorado, Authorizing the Submittal of an Open Space Passive Grant Application to Adams County Open Space in the Amount not to exceed Two Hundred Four Thousand Dollars (\$204,000.00), for the Pleasant Plains Schoolhouse Property Acquisition; and Authorizing the City Manager to Sign the Grant Application.

Mayor McLean read the title of the Resolution into the record.

Parks and Recreation Director Gary Wardle explained that this grant application is for an open space land acquisition. The total project is estimated at \$340,000.00 of which \$20,000.00 is 'due diligence', which includes appraisals, survey, environmental assessments, mineral assessments, and an existing site survey. Staff is applying for \$204,000.00 which is 60% of the total acquisition cost and the City has the remaining \$136,000.00 in the 2014 budget. Director Wardle answered questions from Council regarding:

- The location of the parcel.
- The Historic Preservation Commission being involved in this process since there is a historical building on the property.
- The intended use for the property.

Motion by Councilmember Kniss to approve Resolution 2014-06 the title of which as read by Mayor McLean, **second by Councilmember Edwards.**

Voting aye: All present.

9. UTILITIES BUSINESS ITEMS

Resolutions

A. A Resolution of the City Council of the City of Brighton, Colorado Approving an Intergovernmental Agreement Between the City of Brighton and Tri-County Health Department for the Household Hazardous Waste Program, Authorizing the City's Contribution Under the Intergovernmental Agreement in an Amount not to exceed \$12,000, and Authorizing the City Manager to Execute said Intergovernmental Agreement on Behalf of the City.

Mayor McLean read the title of the Resolution into the record.

City Manager Esquibel introduced Utilities Director Jim Landeck.

Utilities Director Jim Landeck explained that the Resolution will approve an Intergovernmental Agreement (IGA) with Tri-County Health for the purpose of collecting household chemicals and hazardous waste from residents. This program has been well received by the community as it provides them with an opportunity to remove hazardous chemicals from their homes and minimizes the potential for them to end up in the wastewater treatment system, streams or storm sewers. This program was utilized by 102 households in the Brighton community last year and a total of 874

households in the County. Since this program has been so well received and the costs are reasonable and held to the \$10,000.00 to \$12,000.00 figure, staff recommends consideration of this IGA. The 2014 program provides for two (2) separate sites during the year, May 3, 2014 at Water World and September 19th at the Thornton Infrastructure Maintenance Facility. Those dates coincide with the City's Trash Bash. Director Landeck answered questions from Council regarding:

- The minimal fee for drop off.
- The customer donation reducing the amount that the City will pay.

Motion by Councilmember Martinez to approve Resolution 2014-07 the title of which as read by Mayor McLean, **second by Mayor Pro Tem Wallin.**

Voting aye: All present.

10. GENERAL BUSINESS

A. State of the City, January 23, 2014 at 7:00 p.m. at the Armory.

Mayor McLean invited everyone to the State of the City on Thursday.

11. REPORTS

A. By the Mayor – Mayor McLean announced that the Colfax Marathon from Aurora to Lakewood will be held on May 18th. A Turnberry Elementary 2nd Grade class sent a thank you note to the Mayor for speaking to them. Legislative Education and Advocacy day is February 21, 2014. The Colorado Municipal League released their report on the State of Cities and Towns. There was a Denver International Airport mediation meeting last week.

Mayor McLean introduced Bob Gaiser, former City and County of Broomfield Councilmember.

Bob Gaiser explained that he is excited to be running for Adams County Commissioner in District 5.

B. By Department Heads – Economic Development Director Robert Smith reported that the Brighton EDC will have its first board meeting of 2014 tomorrow at 4:30 p.m.

Streets and Fleet Director Joe Smith reported that the Railroad will be closing the railroad crossings at Egbert Street and Bush Street on Monday and part of Tuesday next week to upgrade the crossing equipment.

C. By the City Attorney – No report.

D. By the City Manager – City Manager Esquibel reported that the Colorado Municipal League will be holding a workshop on February 24th and all Councilmembers are encouraged to attend. The Study Session on January 28th will begin at 5:30 p.m. to allow time for Board and Commission interviews. The Study Sessions on January 28th and February 11th will be a time to cover what has happened in the City and where the City is headed in the future. An author will speak with City Council on February 11th regarding the necessity to be passionate about their city.

12. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

Councilmember Bell explained that he was privileged to be a member of the Historic Preservation Commission and work with such a great group of people.

Councilmember Humbert attended the ribbon cutting for the first anniversary of the Art of Hair and he attended the Adams County Town Meeting and the night of music on Saturday at the Armory.

Mayor Pro Tem Wallin congratulated the Youth Commission on a great New Years Eve event.

Councilmember Edwards attended the Senior Advisory Board meeting and there are a lot of plans for the new year. The Senior Advisory Board purchased a new ice machine for the Eagle View Adult Center; seven (7) volunteers passed the AARP driving class for the event drivers and the Eagle View Adult Center kitchen will be closed January 20th through January 24th for an upgrade to the HVAC system.

Councilmember Martinez attended the Adams County Town Hall meeting. The County Fair is celebrating its 110th year and the County is considering having the Fair Parade in Brighton this year and including a tomato throwing contest. Councilmember Martinez asked if any Councilmembers will be interested in volunteering for the tomato throwing contest.

Councilmember Kniss reported that the Legacy Foundation will be hosting the Disc Golf and 2nd Annual Dodge Ball Tournament, more information will follow.

13. EXECUTIVE SESSION

14. ADJOURNMENT

Motion by Councilmember Martinez, second by Councilmember Baca to adjourn at 8:26 p.m.

Voting aye: All present.

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approval Date

**City Council
Agenda Item
6A**

COMMUNITY DEVELOPMENT DEPARTMENT

To: Mayor and City Council
Through City Manager, Manuel Esquibel

Prepared By: Aja Tibbs, Long Range & Historic Preservation Planner

Requested Action: Review and Consider an Ordinance to Amend the Municipal Code, Article 2. Administration.

Process: (Check all that apply)

- ☐ Consider Resolution to Approve
☒ **Consider Ordinance - 1st Reading to Amend**
☐ Consider Ordinance - 2nd Reading to Amend
☐ Other:

Statutory or Municipal Code Deadlines:

- ☐ Publication(s) Required: **(None Required)**
☐ Council Action Required By:
☒ **Requested Council Date: February 18, 2014**

Review and Sign-Off:

✓	Planning Manager, Jason Bradford, AICP
✓	Community Development Director, Holly Prather, AICP
✓	City Attorney, Margaret R. Brubaker, Esq.
	City Manager, Manuel Esquibel

PLANNING DIVISION STAFF REPORT

To:	Mayor and City Council through City Manager, Manuel Esquibel
Prepared By:	Aja Tibbs, Long Range & Historic Preservation Planner
Reviewed By:	Holly Prather, AICP, Community Development Director Jason Bradford, AICP, Planning Manager
Date of Meeting:	February 18, 2014
Requested Action:	Review and Consider an Ordinance to Amend the Municipal Code, Article 2. Administration.

PURPOSE

The City Council reviews and considers amendments to the Municipal Code and renders its decision via ordinance at a first and second reading.

BACKGROUND

The proposed code amendment consists of two components. The first is to amend the Planning Commission Boards and Commissions regulations by increasing the number of alternate members from one to two. This was requested by the Council at the January 28th Study Session in order to provide more consistency with other Boards and Commissions with the City of Brighton. In general, having alternates for a Commission helps to fill vacancies, assure a quorum when members are absent, and provide future Commission candidates with experience prior to full service on the respective Commission. Overall, providing a long term benefit to both the alternates and the Commission they serve on.

The second component is to remove term limitations for the Historic Preservation Commission (HPC) professional members. This amendment was drafted in response to the HPC's presentation to the City Council at the January 14th Study Session. At the meeting, staff presented a letter received from the HPC noting that the HPC is required by their contract with the State to have three professional members serve on the Commission in order to maintain status as a Certified Local Government (CLG). In order to ensure compliance with this requirement, the Commission requested that the two term limit restriction for Professional members be removed from the code. In addition to the CLG requirement, the letter noted that finding professionals can be difficult in a smaller community with a relatively newer CLG status, and research was compiled to demonstrate that only one of the seven surrounding communities maintains term limitations for their Historic Preservation Commission members. A full copy of the letter has been attached for reference.

SUMMARY OF PROPOSED AMENDMENTS

Planning Commission:

The draft ordinance proposes to modify section 2-36-50 in order to revise the number of alternates from one to two. All other notes regarding alternates and their terms remain the same.

Historic Preservation Commission:

The draft ordinance has been provided to modify Section 2-66-10 with the addition of section (b).(1).b. which exempts professional members from term limitations. It clarifies that each professional member must still be appointed by the Mayor and City Council at each term re-appointment. A subsequent amendment was added to section (f) to again clarify that professional members shall be exempt from term limitations.

OPTIONS FOR COUNCIL'S CONSIDERATION

1. Approve the Code Amendment in whole or in part.
2. Continue consideration of the Code Amendment.
3. Deny the Code Amendment with specific findings to justify the denial.

STAFF'S FINDINGS

- **The proposed Code amendments will enhance the work of the Planning Commission and the Historic Preservation Commission, two very important City Commissions.**

ATTACHMENTS

- (Draft) Ordinance (Administration)
- Historic Preservation Commission Letter

**CITY OF BRIGHTON
CITY COUNCIL ORDINANCE**

ORDINANCE NO.: _____
INTRODUCED BY: _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AMENDING THE FOLLOWING SECTIONS OF THE BRIGHTON MUNICIPAL CODE: SECTION 2-36-30, *CREATED; MEMBERSHIP* (RELATING TO ALTERNATES ON THE PLANNING COMMISSION); SECTION 2-36-50, *TERMS OF OFFICE AND COMPENSATION* (RELATING TO ALTERNATES ON THE PLANNING COMMISSION); SECTION 2-66-10 *ESTABLISHMENT; MEMBERSHIP* (RELATING TO THE HISTORIC PRESERVATION COMMISSION); SPECIFICALLY ADDING AN ADDITIONAL ALTERNATE TO THE PLANNING COMMISSION AND EXEMPTING THE PROFESSIONAL MEMBERS OF THE HISTORIC PRESERVATION COMMISSION FROM THE TWO YEAR TERM LIMITATION; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

WHEREAS, the City Council is authorized to establish various City boards and commissions, make appointments for membership thereon, and set forth the terms of office therefore; and

WHEREAS, the City Council finds and determines that it is reasonable and prudent that the membership on the Planning Commission be increased by increasing the number of alternates to two; and

WHEREAS, the City Council finds and determines that it is reasonable and prudent that the Professional members of the Historic Preservation Commission be exempt from two year term limitation; and

WHEREAS, the City Council finds that the adoption of the modification is in the interest of the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Section 2-36-30, **Created; membership** of the Brighton Municipal Code is repealed and reenacted to read as follows:

Section. 2-36-30. **Created; membership.**

There is hereby created a Planning Commission for the City. The Planning Commission shall consist of five (5) members, and two alternates ~~one alternate~~, all of whom shall reside in the City of Brighton, and who shall be appointed as follows:

1. One at-large member appointed by the Mayor with the approval of the City Council; and
2. One member from each ward to be recommended by the Council member

from that ward and appointed by the Mayor with approval of the City Council; and

3. ~~Two~~ ~~One~~ alternate members ~~member~~ appointed by the Mayor with the approval of the City Council; and

4. In recommending, selecting and appointing such members and alternates to the Commission, the Mayor, Council members and City Council may in their reasonable discretion conduct such interviews and adopt such selection guidelines and procedures as are reasonably necessary or appropriate, so as to properly evaluate the qualifications of prospective Commission members and alternates, and accomplish quality appointments.

5. Any member of the Planning Commission who is unable to attend a meeting shall notify the chairperson or vice chairperson in advance of the meeting, stating the reason for his or her absence. Two (2) unexcused absences constitute the resignation of the member. Any member not present when a meeting is called to order shall be considered absent and an alternate will be seated. In the case of absences of regular members, the alternates shall be seated in the following order: the alternate with seniority shall be seated first. If both alternates have served for the same amount of time, seating shall be by alphabetical order of the last names. All members and alternates in attendance may participate in the discussion. Only seated members and alternates seated for absent members may vote.

Section 2. Section 2-36-50, **Terms of office and compensation** of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 2-26-50. Terms of office and compensation.

The members of the Planning Commission shall serve in such capacity without compensation. All terms of service shall expire on January 31, and begin on February 1. The terms of office of each of the five (5) appointed members of the Planning Commission and two (2) alternates shall be four (4) years, or until his/her successor takes office; except the respective terms of two (2) of the members first appointed shall be one (1) year, two (2) other members for two (2) years, and the remaining member for three (3) years.

Section 3. Section 2-66-10(b) 1.b. and f. **Establishment; membership;** of the Brighton Municipal Code is repealed and reenacted to read as follows:

(1) No fewer than three (3) members of the Historic Preservation Commission shall be professionals, as described in Appendix 1, Historic Preservation Professional Qualifications, of the Colorado Certified Local Government Handbook, as may be amended from time to time.

a. The City Council shall, as much as is possible, appoint members to the Historic Preservation Commission who meet the qualifications for an historic preservation professional as described in Appendix 1, Historic Preservation Professional Qualifications of the Colorado Certified Local government Handbook, as may be amended from time to time. Other suitable candidates for the historic preservation professional positions may be appointed to the commission at the discretion of the City Council.

b. Professional members shall be exempt from the consecutive two term limitation requirement referenced in subsection (f). However, each member must still be appointed by the City Council for each consecutive term.

c. The City Council may appoint no more than three (3) members to the Historic Preservation Commission who reside outside of the City limits. Members who reside outside of the City limits shall be appointed, if necessary, to fulfill historic preservation professional vacancies.

(f) The Mayor and City Council shall appoint the members of the Historic Preservation Commission. The initial terms of the members of the Historic Preservation Commission shall be three (3) members for four (4) years, two (2) members for three (3) years and two (2) members for two (2) years. Following the initial terms, the terms of all members shall be four (4) years. Members shall not serve more than two (2) successive terms, **except as otherwise noted for professional members in subsection (b).(1).b.** For the purposes of this provision, a term shall include the balance of an unexpired term served by a person appointed to fill a vacancy if such unexpired term exceeds twenty-four (24) months.

Section 5. Purpose. The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 6. Repeal. Existing or parts of ordinances covering the same matters as embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 7. Validity. If any part or parts of this ordinance are for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

INTRODUCED, PASSED ON FIRST READING, AND ORDERED PUBLISHED THIS 18th DAY OF February, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Standard Blade*
First Publication: February 26, 2014

APPROVED AS TO FORM:

Margaret Brubaker, Esq., City Attorney

**PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS__ DAY OF _____, 2014.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Standard Blade*

Final Publication: _____

Brighton Historic Preservation Commission
22 South 4th Avenue
Brighton, CO 80601
December 12, 2013



Manuel Esquibel, City Manager
City of Brighton
500 South 4th Avenue
Brighton, CO 80601

Dear Mr. Esquibel,

The Commission would like to notify you of their intent to request the City Council remove the current term limitations of Brighton's Historic Preservation Commission professional members. The current regulations note that all Commission members serve on a four year term, with a maximum two term service. The regulations do not currently differentiate between professional and non-professional members. The Commission will request that the Council remove the two term limitation for professional members for the following reasons:

- 1) Finding members willing to participate and commit to serve on the Commission can be difficult. The Commission is still relatively new in its formation, and interest throughout the City is still growing. It will take some time for more members of the community to get involved.
- 2) The regulations require that three of the seven members be "professionals." This is an important role to maintain in the Commission, because these members provide much needed expertise and guidance to the remaining Commissioners. Having professionals to serve on the Commission is also a requirement of Certified Local Governments (CLG's), and required to stay in compliance with our CLG contract. However, there is only a limited pool of persons available to meet the profession criteria, and keeping those available to serve is an advantage to the Commission and Council. *Refer to Section 2-66-10.(b).1., Brighton Municipal Code.*
- 3) Very few surrounding municipalities have term limitations for their Historic Boards or Commissions. Attached is a chart demonstrating the responses of surrounding CLG's (Certified Local Governments) with their corresponding term limitations. The chart indicates that Aurora is the only Commission to adopt term limits, and their population far surpasses that of Brighton's, which might help justify their recently adopted term limits. *Refer to Attached Chart "CLG Term Limitations."*
- 4) Removing term limitations does not remove the Council's ultimate control of the Commission appointments. Provisions in the code require that all members of the Commission be appointed at each term by the Council, and that the Council has the authority to remove a Commission member at any time. With this provision, the Council would remain at liberty to deny a re-appointment if they feel that a new member of the Commission is warranted. *Refer to Section 2-66-10.(f)-(g), Brighton Municipal Code.*

In summary, the Commission finds that removing the two term limitation for professionals would provide long and short term benefits to maintaining a healthy and effective Commission, without impacting the Council's ability to ensure that the Commission follow the direction and work of their authority. If you have any concerns or response to this request, we welcome your input and feedback.

Sincerely,

Joseph Burt, Chairman
(On behalf of the) Brighton Historic Preservation Commission

Attached:
➤ CLG Term Limitations

CLG Term Limitations

The data provided below was obtained by contact with the listed CLG contact for each municipality. The following information was received in response to such request. All groups originally contacted have been listed below.

CLG Municipality	Term Length	Term Limit
Aurora	3 years	3 terms
Castle Rock	Unknown	No limits
Broomfield	Unknown	No limits
Lafayette	Unknown	No limits
Westminster	2 years	No limits
Erie	No Response	No Response
Fort Lupton	3 years	No limits
Longmont	4 years	No limits
Louisville	No Response	No Response

**City Council
Agenda Item
8A**

Department of Parks and Recreation

Reference:

Resolution Approving the Submittal of a Grant Application to Great Outdoors Colorado (GOCO) for an amount not to exceed \$950,000.00 for the “CFRT (Colorado Front Range Trail) from E-470 to Brighton” Project and to authorize the City Manager to Sign the Grant Application.

To: Mayor Richard N. McLean and Members of City Council
Through: Manuel Esquibel, City Manager

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: _____

Prepared By: Gary Wardle, Director of Parks and Recreation; and
Mark Heidt, Assistant Director of Parks and Recreation

Date Prepared: February 10, 2014

PURPOSE

A Resolution authorizing the City of Brighton to submit to Great Outdoors Colorado (GOCO), a Paths to Parks Trail Grant Application requesting grant funding in the amount not to exceed \$950,000.00 for the “CFRT (Colorado Front Range Trail) from E-470 to Brighton” project; and to authorize the City Manager to sign the Grant Application.

BACKGROUND

The CFRT from E-470 to Brighton is located adjacent to the South Platte River from E-470 into Ken Mitchell Lakes Open Space and Park in Brighton. The CFRT is the planned trail alignment along the Front Range of Colorado from the Wyoming border to the New Mexico border. Brighton lies within the “Prairie trail section” of the CFRT.

The concepts of this trails project were presented to City Council along with the Ken Mitchell Lakes Open Space and Park Master Plan in summer of 2006. This trail link to Denver is also noted in Brighton’s Greenways and Trails Master Plan, 52-85 Trail Master Plan, Colorado Front Range Trail Master Plan, and the Brighton’s Parks and Recreation Master Plan Update. Several years ago, the City received funding through a State Trails grant to construct the trail, but had to return a majority of the funds because of the timing of the present sewer line being installed in the same location and the City did not want a new trail torn out to install the sewer line. The City did accept some funding from the State Trails grant for the trail construction documents. These drawings showed the trail travelling through the radio tower property, which is not possible at this time. The City, through this GOCO grant, has included the design and construction drawings to bypass the property through the use of two bridges and the use of easement on the west side of the South Platte River.

This grant application is for 2.28 miles of trail, excavation and fine grading, wayfaring signage, planting of 230 trees and 750 shrubs, soil stabilization, fencing for easements, use of the Mile High Youth Corp to plant the trees and shrubs, trail corridor and bridge design for the section that bypasses the radio tower property, engineering services, and two bridges.

The total cost for the “CFRT (Colorado Front Range Trail) from E-470 to Brighton” is estimated at \$2,427,410.00. The City will budget \$1,477,410.00 in the 2015 and 2016 Recreation Capital Fund budgets and Adams County Open Space grants toward this “CFRT from E-470 to Brighton” project. This

\$1,477,410.00 (60.86% of the total) will be split into 2015 and 2016 City budgets and Adams County Open Space grants. The remaining portion of funding this project will come from this GOCO Paths to Parks Trail Grant of \$950,000.00 (39.14% of the total).

In order to receive the GOCO Paths to Parks Grant monies, the City would be required to enter into a written Grant Agreement with GOCO. The City has previously entered into similar agreements with GOCO. The attached Resolution authorizes Staff to apply for this grant, authorizes the concept of a Grant Agreement between the City and GOCO, and authorizes the City Manager to negotiate and execute the Grant Agreement, if the Paths to Parks Trail Grant award is made by GOCO. The City Attorney has reviewed and approved the submittal of this Resolution to the City Council.

FINANCIAL IMPACT

Awarded GOCO Paths to Parks Trail Grant funds of \$950,000.00 will be used for the “CFRT (Colorado Front Range Trail) from E-470 to Brighton”. The staff will suggest budgeting a total of \$1,477,410.00 that will be split into the 2015 and 2016 Recreation Capital Budgets and Adams County Open Space grants.

OPTIONS FOR COUNCIL CONSIDERATION

- Approve the Resolution,
- Amend the Resolution, or
- Not approve the Resolution.

STAFF RECOMMENDATION

It is recommended that City Council approve the Resolution authorizing Staff to submit a Great Outdoors Colorado (GOCO) Paths to Parks Trail Grant Application, requesting grant funding in an amount not to exceed \$950,000.00 for “CFRT (Colorado Front Range Trail) from E-470 to Brighton”; and authorize the City Manager to sign the Grant Application.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AUTHORIZING THE PATHS TO PARKS GRANT APPLICATION TO GREAT OUTDOORS COLORADO IN THE AMOUNT NOT TO EXCEED NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000.00) FOR THE “CFRT (COLORADO FRONT RANGE TRAIL) FROM E-470 TO BRIGHTON” PROJECT; AND AUTHORIZING THE CITY MANAGER TO SIGN THE GRANT APPLICATION.

WHEREAS, the City of Brighton will apply for a Great Outdoors Colorado (GOCO) – Paths to Parks Trails Grant for the CFRT (Colorado Front Range Trail) from E-470 to Brighton grant application for the design and construction of the CFRT along the South Platte River from E-470 into Ken Mitchell Lakes Open Space and Park in Brighton (“Project”); and

WHEREAS, the City of Brighton is in need of a trail along the South Platte River that will link Brighton to Denver as a section of the CFRT; and

WHEREAS, the City Council believes that the CFRT Project through partial funding through a GOCO Paths to Parks Trail Grant application is proper and essential and will allow for the City to effectively use the trail alignment in the future; and

WHEREAS, toward that end, the City of Brighton will apply for a \$950,000.00 grant from GOCO to partially fund the Project; and

WHEREAS, the City of Brighton estimates that the total cost of the Project, as will be submitted in the City’s GOCO Paths to Parks Trail Grant Application, will be \$2,427,410.00, of which amount this Paths to Parks Trail Grant will fund \$950,000.00, the City’s 2015 and 2016 budgets and Adams County Open Space grants will cover \$1,477,410.00 in cash match; and

WHEREAS, the final determination of the budget for the Project will be made if and when the grant funding is approved; and

WHEREAS, the City of Brighton City Council believes that it is reasonable and proper for the City to enter into a written agreement with GOCO, provided that GOCO issues the GOCO – Paths to Parks Trail Grant, for the budgeting, allocation and contribution of funds for the “CFRT (Colorado Front Range Trail) from E-470 to Brighton” in the amounts contemplated herein; and

WHEREAS, the City Council hereby finds and determines that said Grant Agreement would be necessary and proper to proceed with the “CFRT (Colorado Front Range Trail) from E-470 to Brighton”, and that it is in the best interests of the City to approve such an Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, AS FOLLOWS:

1. The City staff is authorized to submit a Great Outdoors Colorado (GOCO) Paths to Parks Trail Grant Application for the “CFRT (Colorado Front Range Trail) from E-470 to Brighton”; and the City Manager is authorized to sign the Grant application on behalf of the City.
2. Upon the City’s receipt of a written acknowledgement from GOCO, that GOCO shall fund the City’s GOCO Paths to Parks Trail Grant Application in the amount of \$950,000.00, the City Manager or his designee shall promptly commence good faith negotiations for a reasonable “*Grant Agreement*” between the City and GOCO for the use of the grant monies to complete the “CFRT (Colorado Front Range Trail) from E-470 to Brighton” project for consideration by the City Council.

RESOLVED, this 18th day of February 2014.

CITY OF BRIGHTON, COLORADO

ATTEST:

By: _____
Richard N. McLean, Mayor

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, Esq.
City Attorney

**City Council
Agenda Item
9A**

Department of Utilities

Reference: Proposed revisions to the City of Brighton Municipal Code Chapter 17-12-20 Definitions and Chapter 17-16-200 FC Floodplain Control District

To: Mayor Dick McLean and Members of City Council
Through: Manuel Esquibel, City Manager

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: January 22, 2014, Brighton Standard Blade

Prepared By: Juliana Archuleta, Stormwater Coordinator
Through: Dennis Crock, P.E. Utility Engineer
Through: James M. Landeck, P.E. Director of Utilities

Date Prepared: 12/18/2013

PURPOSE

City Council consideration of a proposed revision to the City of Brighton Municipal Code Chapter 17-12-20 Definitions and Chapter 17-16-200 FC Floodplain Control District.

BACKGROUND

The City of Brighton Utilities Department's Floodplain Program is dedicated to minimize the loss of life and property that is associated with flooding events, and providing residents with a safe environment to live, work, and play.

Basic homeowner's insurance does not cover damage from floods. To be able to remain an eligible community for Federally subsidized flood insurance coverage the City of Brighton must adhere to the minimum standards of the entities listed below:

- 1) Federal Emergency Management Agency (FEMA)'s National Flood Insurance Program (NFIP); and
- 2) State of Colorado Department of Natural Resources-Colorado Water Conservation Board (CWCB)'s Rules and Regulations for Regulatory Floodplains in Colorado,

The CWCB has promulgated new floodplain rules and regulations that became effective on January 14, 2011. A transition period of three years was given to local governments to modify local ordinances.

The proposed ordinance modifications provide for increased public safety and reduced flood losses through the implementation of higher standards to regulations and processes that currently exist. For example, Critical Facilities located within the 100-year floodplain are now required to be protected with a freeboard of two feet instead of the previous standard of one-foot freeboard. The change in freeboard is intended to minimize severe consequences to public health and safety or interruptions of essential services and operations for the community at any time before, during and after a flood.

FINANCIAL IMPACT

Per the CWCB Cost, Benefit, and Regulatory Analysis, dated October 14, 2012, the costs to administer these new requirements are effectively the same as with the existing rules. While the Rules set higher criteria for existing processes, the processes themselves are not altered. The regulatory infrastructure already in place (such as existing local staff resources) will not need to be increased or altered.

Staff acknowledges that it may cost more to design and construct activities to meet these higher criteria. However, the higher criteria proposed in this rule is being proposed for the sake of public safety, and it has been demonstrated that the benefits of these higher standards outweigh the costs.

OPTIONS FOR COUNCIL CONSIDERATION

1. Approval of the proposed amendments as presented
2. Modification of the proposed amendments to the ordinance
3. Postponement of proposed amendments to a later date.

STAFF RECOMMENDATION

Staff has taken several months to prepare the final ordinance revisions with the assistance of the City Attorney's Office. A significant amount of research was done and significant guidance was received from the State of Colorado CWCB. Staff believes the proposed amendments to Chapter 17 of the Municipal Code will serve the best interests of our community and therefore, staff recommends approval of the proposed amendments to Articles 17-12-20, and 17-16-200, of the Municipal Code as presented.

Attachments:

- Ordinance including Revisions to the City of Brighton Municipal Code Chapter 17-12-20 and 17-16-200

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AMENDING SECTION 17-12-20 WORDS TERMS AND PHRASES AND SECTION 17-16-200 FC – FLOOD PLAIN CONTROL DISTRICT OF CHAPTER 17. LAND USE AND DEVELOPMENT CODE, OF THE BRIGHTON MUNICIPAL CODE; CORRECTING AND ADDING DEFINITIONS; ADDING STANDARDS AND REQUIREMENTS FOR APPLICATIONS FOR FLOOD PLAIN PERMITS AND THE REVIEW THEREOF; ADDING TO AND AMENDING CERTAIN FLOOD PLAIN REGULATIONS; DESIGNATING CRITICAL FACILITIES; SETTING REQUIREMENTS FOR PROPERTIES REMOVED FROM THE FLOOD PLAIN BY FILL AND RECREATIONAL VEHICLES AS REQUIRED BY THE COLORADO DEPARTMENT OF NATURAL RESOURCES, WATER CONSERVATION BOARD’S RULES AND REGULATIONS FOR REGULATORY FLOODPLAINS IN COLORADO; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

ORDINANCE NO: _____

INTRODUCED BY: Humbert

WHEREAS, Section 17-17-200 FC-Flood Plain Control District of the Land Use and Development Code, City of Brighton is an overlay zoning district adopting and making applicable restrictions, standards, and regulations therein in addition to those set forth in the underlying zone district for the protection of the public health, safety and welfare by preventing loss of life and property, as well as economic and social hardships that result from flooding; and

WHEREAS, the City of Brighton must adhere to the minimum standards of both Federal Emergency Management Agency’s National Flood Insurance Program (NFIP) and the Colorado Water Conservation Board’s statewide floodplain rules applicable to all geographic areas in Colorado, to be able to remain an eligible community for flood insurance coverage; and.

WHEREAS, since the adoption of Section 17-16-200, FC- Flood Plain Control District of the Land Use and Development Code, Brighton Municipal Code, the Colorado Water Conservation Board has issued new rules that apply higher standards to regulations and processes that currently exist; and,

WHEREAS, designated Critical Facilities located within the 100-year floodplain are now required to be protected with a freeboard of two feet instead of the standard of one-foot freeboard to minimize severe consequences to public health and safety or interruptions of essential services and operations for the community at any time before, during and after a flood; and

WHEREAS, it is necessary and in the public interest to add certain definitions to the Land Use and Development Code, amend, clarify and strengthen other sections and provisions to Section 17-16-200. FC-Flood Plain Control District as the same relate to controlling development in the floodplain; and,

WHEREAS, it is the opinion of the City Council that it is in the best interest of the public health, safety, and welfare that Section 17-12-20, Words, terms or phrases; and Section 17-16-200, FC– Flood Plain Control District, be amended to adopt new standards that are intended to prevent loss of life and property, as well as economic and social hardships that result from flooding.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

SECTION 1. Section 17-12-20 Words, terms or phrases of the Land Use and Development Code. Brighton Municipal Code is hereby amended by the additions to or amendments of the following definitions to read as follows:

Sec. 17-12-20. Words, terms or phrases.

Addition. *Any activity that expands the enclosed footprint or increases the square footage of an existing structure.*

Conditional Letter of Map Revision (CLOMR). *FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.*

Critical Facility. *A structure or related infrastructure, but not the land on which it is situated, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.*

Flood, 100-year flood. ~~A flood of such magnitude as may reasonably be expected to be equaled or exceeded on an average of once every one hundred (100) years; the term also means that level of flooding having a one percent (1%) probability of occurrence in any year.~~

A flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms "one-hundred-year flood" and "one percent chance flood" are synonymous with the term "100-year flood." The term does not imply that the flood will necessarily happen once every one hundred years.

Flood, 500-year flood. *A flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annual-flood). The term does not imply that the flood will necessarily happen once every five hundred years*

Flood, 500-year floodplain. *The area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.*

Flood plain administrator. *The Flood Plain Administrator, also referred to in this Section as the "City Engineer", is the City employee appointed by the City Manager to administer the duties set forth in this Section 17-16-200. FC – Flood Plain Control District.*

Freeboard. *The vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood, such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.*

Historic Structure. Any structure that is:

- a. Designated an historic landmark in accordance with the provisions and requirements of Article 17-52 Historic Preservation of the City of Brighton Land Use and Development Code;
- b. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- c. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or
- d. Individually listed in the State of Colorado inventory of historic places.

Letter of Map Revision (LOMR). FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Plain Area (SFHA).

Letter of Map Revision based on Fill (LOMR-F). FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

No-Rise Certification. A record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado professional engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

Recreational Vehicle. Means a vehicle which is:

- a. Built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projections;
- c. Designed to be self-propelled or carried on or towable by a light duty truck or other vehicle; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory flood plain. The regulatory flood plain consists of those areas set forth in subsection 17-16-200(c) Regulatory flood plain boundary below, also referred to herein as the Special Flood Plain Area.

Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure just prior to when the damage occurred.

SECTION 2. Subsection 17-16-200(b) Statement of Goals, Purpose and Policy is amended by the addition of subsection (8) to read as follows.

17-16-200 (b)(8) *Warning and Disclaimer of Liability.* *The degree of flood protection required by this Section 17-16-200 FC-Flood Plain Control District, as amended from time to time, is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Section 17-16-200 does not imply that land outside the Regulatory Flood Boundary or uses permitted or approved within such areas will be free from flooding or flood damages. This Section shall not create liability on the part of the City of Brighton or any official or employee thereof for any flood damages that result from reliance on this Section 17-16-200 or any administrative decision lawfully made hereunder.*

SECTION 3. Subsection 17-16-200(c) Flood Boundary is repealed and reenacted in its entirety to read as follows:

17-16-200(c) *Regulatory Flood Plain Boundary*

(1) The provisions of this Section 17-16-200 FC-Flood Plain Control District apply to the areas of special flood plain area identified by the Federal Emergency Management Agency in the scientific and engineering report entitled, "The Flood Insurance Study for City of Brighton Adams County, Colorado and Incorporated Areas," dated March 5, 2007, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM), as may be amended from time to time. Additional flood boundaries that shall apply are identified in the current Flood Hazard Area Delineation Studies for Todd Creek, the South Platte River, Adams County, Second Creek and Third Creek, as published and amended by the Urban Drainage and Flood Control District (UDFCD), as the same may be amended from time to time. If these studies conflict, the most restrictive shall apply. The Flood Insurance Study, the Flood Insurance Rate Maps and the afore mentioned UDFCD Flood Hazard Area Delineation Studies shall be available for public review at the offices of ~~Community Development of the Public Works~~ the Utilities Department, City of Brighton.

(2) If an applicant disputes the location of a *regulatory* flood plain boundary with the City Engineer, he or she may file with the City Engineer a written request for a hearing before the City Council, which will be held within thirty (30) days after the City Engineer receives the request. *The written request shall specify the nature of the dispute, and shall include therewith a statement from a registered Colorado professional engineer as to projected flood profiles, elevation and projected velocity, and the basis for the claim that the location of the boundary is incorrect.* The City Council shall not change the boundary line for City regulatory purposes unless it finds that the boundary is clearly incorrect. The City Council recognizes that only formal letters of map and study amendments (*LOMR or LOMR-F*) issued by the Federal Emergency Management Agency are effective to change the boundary line for federal regulatory purposes.

(3) If a lot or parcel of land lies partly within the *regulatory* flood plain, the part of such lot or parcel within such area shall meet all the standards and requirements of such area as prescribed by this Section 17-16-200 FC-Flood Plain Control District. If land outside the City is included within a *regulatory* flood plain area, the requirements of this ~~Article~~ Section 17-16-200 apply to such land upon annexation without any requirements that the City Council further approve a *flood boundary* map covering such area.

SECTION 4 Subsection 17-16-200(d) Administration, (1), (2) and the introduction of (3). are repealed and reenacted in their entirety to read as follows:

17-16-200(d) Administration.

(1) Designation and duties of Flood Plain Administrator. The City Engineer or the Flood Plain Administrator as designated by the City Manager shall administer the requirements of this Section 17-16-200 FC-Flood Plain Control District and shall:

a. Determine that the requirements of this Section 17-16-200 have been met before issuing any permit for development in the flood plain;

b. Review applications for structures located in the Regulatory Flood Plain to assure that all necessary conditional use permits, certificates of appropriateness or exemptions for historic structures, and other required permits have been received from those governmental agencies from which approval is required by City, federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334;

c. Notify adjacent communities, Adams County, the Colorado Water Conservation District Board and the Federal Emergency Management Agency before permitting any change in a watercourse;

d. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;

e. Maintain, for public inspection, all records pertaining to the provisions of this Section 17-16-200 FC-Flood Plain Control District, *including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures; and*

f. *Where interpretation is needed as to the exact location of the boundaries of a Regulatory Flood Plain (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Flood Plain Administrator shall make the necessary interpretations.*

(2) Flood regulations in relation to other regulations. The requirements of this Section 17-16-200 FC-Flood Plain Control District supplement those imposed on the same lands by any underlying zoning provisions of Chapter 17, Land Use and Development Code, Chapter 14, Stormdrainage of the Brighton Municipal Code, any ordinance of the City or annexation agreement, *as the same may be amended from time to time*. If there is a conflict between such requirements or agreements, the more restrictive controls. If a use not conforming to the requirements of this Section 17-16-200 FC-Flood Plain Control District is discontinued for six (6) consecutive months, no person shall use the structure or premises thereafter unless such use and structure conform to the requirements of Section 17-16-200.

(3) Existing structures. Any activity for which a Floodplain Permit was issued by the City Engineer or a CLOMR was issued by FEMA prior to the adoption of this ordinance amending Section 17-16-200 may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this ordinance if it meets such standards. The use of any structure on land within the Regulatory Flood Plain that was lawful before the application of this ordinance and conformed to the prior provisions of Section 17-16-200 FC-Flood Plain Control District or any amendment thereto, but does not conform to the requirements adopted herein, may be continued, subject to the provisions of Article 17-28. Non-conforming uses and structures of the City of Brighton Land Use and Development Code as the same may be amended from time to time and the following conditions:

SECTION 5. Subsection 17-16-200(d) Administration, (4) Issuance of a flood plain permit, (b)(5) Application materials shall be renumbered as subsection 17-16-200(d)(5) and repealed and reenacted to read as follows:

Section 17-16-200(d)(5) Application Materials

Application materials. *Application for a Flood Plain Permit shall be presented to the Flood Plain Administrator on forms furnished by him/her and may include, but not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to the Regulatory Flood Plain area. Additionally, the following information is required:*

- (a) *Cross-sections illustrating the flood plain in the area to be occupied by the development and the base flood elevation;*
- (b) *Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;*
- (c) *Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;*
- (d) *A certificate from a registered Colorado professional engineer or architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of subsection 17-16-200(e)(10)(e) below;*
- (e) *A flood plain analysis by a Colorado registered professional engineer of the flood profile, elevation and velocity, using methodology acceptable to the Federal Emergency Management Agency, including existing and anticipated uses and making a determination that the proposed construction will not cause a rise in the elevation of the water surface of the base flood.*
- (f) *An analysis by a registered Colorado professional engineer or licensed architect of the structural design, specifications, and plans for the construction certifying that the design and methods of construction are in compliance with the regulations and requirements of this Section 17-16-200 FC-Flood control district;*
- (g) *Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of the proposed development; and*
- (h) *In addition to the application materials required to obtain a permit, the City Engineer may require the applicant to furnish additional information and details deemed necessary to evaluate the effects of the proposed development upon the flood plain and the safety of inhabitants and visitors.*

SECTION 6. A new subsection 17-16-200(d) Administration (6) Application Review is adopted to read as follows:

Section 17-16-200(d)(6) Application Review.

Approval, denial or approval with conditions of a Flood Plain Permit by the Flood Plain Administrator shall be based on all of the provisions of this Section 17-16-200 Flood Plain Control District. When reviewing an application for a Flood Plain Permit, the Flood Plain Administrator may approve, disapprove or approve with conditions the application after reviewing the following relevant factors:

- (a) *The danger to life and property due to flooding or erosion damage;*
- (b) *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;*
- (c) *The danger that materials may be swept onto other lands to the injury or damage to another;*
- (d) *The compatibility of the proposed use with existing developments;*
- (e) *The safety of access to the property in times of flood for ordinary and emergency vehicles;*

(f) *The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water services;*

(g) *The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;*

(h) *The necessity to the facility of a water front location, where applicable;*

(i) *The availability of alternative locations, not subject to flooding or erosion damages, for the proposed use;*

(j) *Whether or not the proposed development constitutes a critical facility as designated in subsection 17-16-200(g) Critical facilities below or so designated by other action of the City Council, and if it is, the required freeboard elevation above the base flood elevation shall be no less than two (2) feet; and*

(k) *The application of the provisions and regulations of the City of Brighton Land Use Development Code and Comprehensive Plan.*

SECTION 7. Subsections 17-16-200(e) Flood Plain Regulations (3); (10)(e) and (11) are repealed and reenacted to read as follows:

17-16-200(e)(3) *With the exception of critical facilities outlined in subsection 17-16-200(g) below, the freeboard of the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork) of new construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall be either elevated to at least one (1) foot above the base flood elevation, or together with attendant utility and sanitary facilities, be designed so that at one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*

A registered Colorado professional engineer or architect shall develop and review structural designs, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with this subsection 17-16-200(e)(3) and accepted standards of practice.

17-16-200(e)(10)(e) *New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered Colorado professional engineer or architect or meet or exceed the following minimum criteria:*

(1) *A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; and*

(2) *The bottom of all openings shall be no higher than one foot above grade; and*

(3) *Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.*

17-16-200(e)(11) *No person shall store or process materials that are hazardous, flammable, poisonous or explosive, that in times of flooding could in any way be harmful to human, animal or plant life, or that are buoyant and not adequately anchored or contained, except at or above the Regulatory Flood Plain elevation for the area in which they are located.*

SECTION 8. A new subsection 17-16-200(d) Administration (4) (b) Development exempted (5) Compliance is adopted to read as follows:

17-16-200(d)(4)(b)(5) *Compliance.*

No structure or land shall hereafter be located, altered, or have its use changed within the Regulatory Flood Plain without full compliance with the terms of this Section 17-16-200 FC-Flood Plain Control District, as the same may be amended from time to time, and other applicable ordinances and regulations. Nothing herein shall prevent the City from taking such lawful action as is necessary to prevent or remedy any violation.

SECTION 9. A new subsection 17-16-200(e) Flood plain regulations (17) Recreational Vehicles is adopted to read as follows:

Section 17-16-200(e)(17) Recreational Vehicles - All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the City's FIRM must either:

- (1) Be on the site for fewer than 180 consecutive days;*
- (2) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or*
- (3) Recreational vehicles must be placed in an elevated or a permanent foundation such that the lowest floor is elevated to one foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.*

SECTION 10. A new subsection 17-16-200(f) Properties removed from floodplain by fill is adopted to read as follows:

Section 17-16-200(f) Properties removed from floodplain by fill.

A flood plain permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR_F), unless such new structure or addition complies with the following:

- (1) Residential Construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one (1) foot above the base flood elevation that existed prior to the placement of fill.*
- (2) Nonresidential Construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one (1) foot above the base flood elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one (1) foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effect of buoyancy.*

SECTION 11. A new subsection 17-16-200(g) Critical facilities is adopted to read as follows:

17-16-200(g) Critical Facilities.

(1) Protection for Critical Facilities. All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Regulatory Flood Plain shall be regulated to a higher standard than structures not determined to be Critical Facilities.

For the purposes of this Section 17-16-200 FC-Flood Plain Control District, protection shall include one of the following:

a) Location outside the Regulatory Flood Plain; or
b) Elevation of the lowest floor or flood proofing of the structure, together with attendant utility and sanitary facilities, to at least two (2) feet above the Base Flood Elevation.

(2) Ingress and egress for new Critical Facilities. New Critical Facilities shall, when practicable as determined by the City Engineer, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

(3) Classification of Critical Facilities. For the purposes of this Section 17-16-200 FC-Flood Plain Control District, the following shall be classified as Critical Facilities:

a) Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.

Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and related appurtenances.

Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the City Engineer that the facility is an element of a redundant system for which service will not be interrupted during a flood.

(b) Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials.

Specific exemptions to this category include:

Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.

Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.

(c) At-risk population facilities include medical care, congregate care, and schools.

(4) Ingress and egress for new Critical Facilities: New Critical Facilities shall, when practicable as determined by the City Engineer, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

SECTION 12. Subsection (g) Flood Plain variance criteria, is hereby re-lettered as (h) Flood plain variance criteria and subsection (g)(2) Variance criteria (h) is repealed and reenacted in its entirety to read as follows:

Subsection 17-16-200(h)(2)(h) Historic Structures.

Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

SECTION 13. **Repeal.** Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

SECTION 14. **Purpose.** The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

SECTION 15. **Validity.** If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

SECTION 16. **Interpretation.** This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

**INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED
THIS 4th DAY OF February, 2014.**

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

Published in the *Standard Blade*
First Publication: February 12, 2014

**PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED
BY TITLE ONLY THIS 18th DAY OF February, 2014.**

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Standard Blade*
Final Publication: February 26, 2014

City Council Agenda Item 9B

Department of Utilities

STAFF REPORT

Reference: Waiver of Request for Proposal Process and Approval of Professional Services Agreement for the Provision of Water Rights Engineering with White Sands Water Engineers, Inc.

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

☐ Study Session Date: _____ ☐ Regular Council Agenda Date: _____

☐ City Attorney Approval: _____ ☐ City Manager Approval: _____

☐ Finance Director Approval: _____

Prepared By: Sarah E. Borgers, P.E., Water Resources Engineer

Date Prepared: February 6, 2014

PURPOSE

Consider a resolution to find and acknowledge that good cause exists and that it is in the best interest of the City to waive the request for proposal process and approve a Professional Service Agreement with White Sands Water Engineers, Inc. for a term beginning upon execution of the agreement and ending December 31, 2014 to provide water rights engineering and expert witness services concerning water related matters.

BACKGROUND

1. The City has worked with Leonard Rice Engineers, Inc. on complex water rights engineering matters since 1982. These matters include water court applications, preparation of the City's Substitute Water Supply Plans (SWSPs), and water rights evaluation per staff and attorney direction.
2. Many of the City's obligations, in Water Court in particular, may not be completed by City staff. A third party must be employed to complete these tasks.
3. On January 1, 2014, Leonard Rice's lead Project Manager for the City of Brighton case work split off with other Leonard Rice staff and began a new firm called White Sands Water Engineers, Inc.
4. The Project Manager, Ms. Jennifer Ashworth, has extensive knowledge of Brighton's water rights portfolio and augmentation system including augmentation plans and water resources facilities and rights. Most importantly, she has an indispensable knowledge of Brighton's on-going capstone water court case, 03CW320, which is going to trial in June of this year.
5. If the request for proposal process is waived and approval of the Professional Service Agreement is granted, Leonard Rice Engineers, Inc. will continue to provide support

services for groundwater modeling analysis. White Sands Water Engineers, Inc. will provide surface water analysis as well as be the administrative lead for the City's on-going water court cases.

6. Staff has reviewed the attached agreement and has no additional comments.

FINANCIAL IMPACT

1. White Sands Water Engineers, Inc. is more cost competitive than Leonard Rice Engineers, Inc.
2. The following are Leonard Rice Engineers, Inc. current rates:
 - a. Principals: \$235-\$245
 - b. Project Managers: \$176-\$235
 - c. Engineers and Hydrologists: \$108-\$165
 - d. Technicians, Draftsman, Computer Operators: \$89-\$112
3. The following are White Sands Water Engineers, Inc. current rates:
 - a. Principals: \$180-\$200
 - b. Project Managers and Staff Engineers: \$110-\$150
4. The engineering fees are billed to the Professional Services account in the Water Fund. The 2014 budget reflects the costs for engineering fees.

OPTIONS FOR CITY COUNCIL CONSIDERATION

The Council may take any of the following actions:

1. Find and acknowledge that good cause exists and that it is in the best interest of the City to waive the request for proposal process and approve the Professional Services Agreement for Engineering Services for Water Resource Evaluation, Water Court Administrative Work, and Surface Water Analysis with White Sands Water Engineers, Inc.
2. Reject the proposed resolution.
3. Postpone consideration of the proposed resolution to negotiate item(s) in the Agreement.

STAFF RECOMMENDATION

Staff finds the terms of the agreement acceptable and competitive. Utilities staff recommends the approval of the Professional Services Agreement for Engineering Services for Water Resource Evaluation, Water Court Administrative Work, and Surface Water Analysis with White Sands Water Engineers, Inc. for a term beginning from the time of execution of the contract to December 31, 2014.

ATTACHMENTS

- Professional Services Agreement for Engineering Services for Water Resource Evaluation, Water Court Administrative Work, and Surface Water Analysis with White Sands Water Engineers, Inc.

**CITY OF BRIGHTON
CITY COUNCIL RESOLUTION**

RESOLUTION NUMBER: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, TO FIND AND ACKNOWLEDGE THAT GOOD CAUSE EXISTS AND THAT IT IS IN THE BEST INTEREST OF THE CITY TO WAIVE THE REQUEST FOR PROPOSAL PROCESS AND APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH WHITE SANDS WATER ENGINEERS, INC. FOR THE PROVISION OF WATER RELATED ENGINEERING SERVICES TO THE CITY; SETTING FORTH THE FEES FOR SAID SERVICES; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY; AND SETTING FORTH OTHER DETAILS RELATED THERETO

WHEREAS, pursuant to Section 31-15-101 (1) c of the Colorado revised Statutes, municipalities are vested with the power to enter into contracts; and

WHEREAS, Section 3-8-10 and 3-08-20 of the Brighton Municipal Code recognize “professional services contracts” as not susceptible to formal sealed-bid procedures, and authorize the City to enter into said contracts, when it is deemed in the best interest of the city to do so; and

WHEREAS, Section 3-8-120 of the Brighton Municipal Code provides that, ‘for good cause shown’, the City Council can waive the formal bid process for contracts greater than \$50,000; and

WHEREAS, White Sands Water Engineers, Inc. staff has extensive knowledge in ongoing water rights matters that are critical to the preservation and operation of the City’s water supply; and

WHEREAS, White Sands Water Engineers, Inc. has agreed to provide Engineering Services to the City for water rights related matters and has executed a Professional Services Agreement with the City for said services; and

WHEREAS, the City believes that White Sands Water Engineers, Inc. possesses the expertise and essential knowledge necessary to perform the services as specifically set forth in the subject Agreement; and

WHEREAS, the City Council believes that it is in the best interest of the City to approve the subject Professional Services Agreement and authorize the Mayor to sign said contract on behalf of the City.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:**

1. Good cause exists and it is in the best interest of the City to waive the request for proposal process for Engineering Services for Water Resource Evaluation, Water Court Administrative Work, and Surface Water Analysis.
2. The Professional Services Agreement for Engineering Services for Water Resource Evaluation, Water Court Administrative Work, and Surface Water Analysis by and between the City of Brighton and White Sands Water Engineers, Inc., attached hereto as Exhibit "A", is hereby approved, and the Mayor is authorized to execute said Contract on behalf of the City.

RESOLVED THIS 18th DAY OF February, 2014

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

Attest:

Natalie Hoel, City Clerk

Approved as to form:

Margaret R. Brubaker, Esq., City Attorney

CITY OF BRIGHTON

PROFESSIONAL SERVICES AGREEMENT

for

Engineering Services for Water Resource Evaluation, Water Court Administrative Work, and Surface Water Analysis

THIS AGREEMENT made and entered into this _____ day of _____ in the year Two Thousand and Fourteen (2014) by and between the ***CITY OF BRIGHTON, COLORADO***, a home rule municipal corporation, hereinafter referred to as the "***City***", and ***WHITE SANDS WATER ENGINEERS, INC.***, a Colorado corporation, hereinafter referred to as "***Professional***".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. **SCOPE OF WORK.** The Professional agrees to provide Engineering Services for Water Resource Evaluation, Water Court Administrative Work, and Surface Water Analysis and Water Court representation as more specifically set forth in the Scope of Services attached hereto as Exhibit "A", consisting of one (1) page and incorporated herein by this reference.
2. **PROFESSIONAL RESPONSIBILITY.** The Professional has held itself out to the City of Brighton as having the requisite expertise and experience to perform the required Services for the Project. Professional shall faithfully perform the Services required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform Services of a similar nature to the Services described in this Agreement.
3. **THE WORK SCHEDULE.** The Services to be performed pursuant to this Agreement shall be performed through the 2014 calendar year, subject to renewal at the sole option of the City.
4. **TIME OF COMMENCEMENT AND COMPLETION OF SERVICES.** The Services to be performed pursuant to this Agreement shall be initiated upon the City's Notice to Proceed and continue through December 31, 2014 unless sooner terminated.
5. **EARLY TERMINATION BY CITY.** Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Professional. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties.

All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

If Professional:

White Sands Water Engineers, Inc.
2935 Darley Ave.
Boulder, CO 80305
303.495.7576

If City:

With Copy To:

Director of Utilities	City Manager	Procurement/Contracts Mgr
City of Brighton	City of Brighton	City of Brighton
500 South 4th Avenue	500 South 4th Avenue	500 South 4 th Avenue
Brighton, CO 80601	Brighton, CO 80601	Brighton, CO 80601
303.655.2033		303.655.2001

In the event of any such early termination by the City, the Professional shall be paid for services rendered and reimbursable costs incurred prior to the date of termination, subject only to the satisfactory performance of the Professional's obligations under this Agreement. Such payment shall be the Professional's sole right and remedy for such termination.

6. **COMPLIANCE WITH PATENT, TRADEMARK AND COPYRIGHT LAWS.** The Professional represents that all Services performed by Professional under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Professional shall not utilize any protected patent, trademark or copyright in performance of its Services unless Professional has obtained proper permission and all licenses, releases and other necessary documents. If Professional specifies any material, equipment, process or procedure, which is protected, Professional shall properly disclose such patents, trademarks and copyrights in the Construction Drawings or Technical Specifications.

The Professional releases, indemnifies and holds harmless the City of Brighton, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liabilities actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of Services under this Agreement which infringes upon and patent, trademark or copyright protected by law.

7. **DESIGN, PROJECT, INDEMNITY AND INSURANCE RESPONSIBILITY.** The Professional shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all Services rendered by the Professional. The Professional shall save, indemnify, defend, and hold harmless the City of Brighton, its officers, agents, and employees, from and against all liability, claims, judgments, suits, demands for damages to persons or property with respect to the liability coverages, except Professional Liability

coverage, specified herein which arise out of, result from or are in any manner connected with the Services to be performed under this Agreement, to the extent such injury, loss or damage is caused by, or is claimed to be caused by, the negligent acts, errors, or omissions of Professional, any subcontractor or subconsultant of Professional, or any officer, employee, or agent of Professional.

Professional agrees to indemnify and hold harmless the City of Brighton, and its officers, agents and employees, from and against all liability, claims judgments, suits, demands for damages to persons or property with respect to the Professional Liability coverages specified herein which arise out of, result from or are in any manner connected with the Work to be performed under this Agreement, to the extent such injury, loss or damage is caused by, the negligent acts, errors or omissions of Professional, any Subcontractor or Subconsultant of Professional, or any officer, employee or agent of Professional.

Professional's duty to indemnify the City of Brighton shall arise at the time written notice of a claim is first provided to the City of Brighton regardless of whether claimant has filed suit on the claim. Professional's duty to indemnify the City of Brighton shall arise even if City of Brighton is the only party sued by claimant and/or claimant alleges that the City of Brighton's negligence was the sole cause of claimant's damages. Professional's indemnification obligation shall include, but not be limited to, any claim made against City of Brighton by (1) Professional's employee, subcontractor or subconsultant who has been injured on property owned by the City of Brighton; or (2) a third party claiming patent, copyright or trademark infringement.

The Professional shall maintain Insurance in the kinds and amounts set forth herein.

COMPENSATION. In consideration of the Services to be performed pursuant to this Agreement, the City agrees to pay Professional according to the following hourly rates: (i) Principal Engineers and Senior Project Managers \$180 to \$200; (ii) Project Managers and Staff Engineers \$110 to \$150. Outside expenses incurred directly in connection with the Professional's work for the City will be billed at cost plus 5 percent. Such expenses may include items such as sub-contractor fees (if any), travel costs for travel more than 50 miles away from Professional's office, and reproduction costs for large exhibits for trial and normal copying and printing required to provide Services.

The Professional shall submit a task list to the City Water Resources Engineer, including a detailed description of the proposed services to be rendered for each task, together with a 'not to exceed amount' for each individual task. Professional is not authorized to complete work and shall not commence work until and unless the City Water Resources Engineer has approved each task list item in writing.

The Parties acknowledge that new water court cases or new issues within ongoing cases could cause an increase beyond the initially approved task list. Professional shall notify the City Water Resources Engineer as soon as practicable and provide an updated task list that shall incorporate any anticipated changes. The updated task list must be approved by the City Water Resources Engineer prior to commencement of additional work.

The Professional shall bill its charges to the City periodically, but no more frequently than once each month. The itemized invoices from the Professional shall include:

- a. A list of the Professional's employees who worked on the Project during the billing period, the amount of time each worked with a description of work performed, and the associated billing rate of each employee; and
- b. An itemized list of reimbursable expenses and, where applicable, copies of invoices for outside services or materials.

The amounts of all such payments shall be based upon the Professional's City-verified progress in completing the Services to be performed pursuant hereto and upon the City's approval of the Professional's actual reimbursable expenses. The City shall make payment following acceptance of the work.

9. **CITY REPRESENTATIVE.** The City designates the Water Resources Engineer as its project representative who shall make, within the scope of his authority, all necessary and proper decisions with reference to the Project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the City Representative.
10. **PROFESSIONAL REPRESENTATIVE.** The Professional designates Ms. Jennifer Ashworth, P.E., as its project manager to manage and supervise the performance of this Agreement on behalf of the Professional. Associated with the project manager shall be staff members whose experience and qualifications are appropriate for this Project.
11. **PROJECT DOCUMENTS.** Upon conclusion of the Project and before final payment, the Professional shall provide to the City the final written work product(s). Upon final payment, all Project notes, reports, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other final Project work products developed specifically for the Project are and shall remain the sole and exclusive property of the City. The Professional shall not provide copies of any material prepared hereunder to any other person or entity without the prior written consent of the City, unless required by law or court order to be disclosed.
12. **PROGRESS REPORT.** Professional shall comply with the requirements of the Scope of Work regarding progress meetings and the obligations related thereto. Failure to provide any required monthly report or conduct the required progress meetings may, at the option of the City, suspend the processing of any partial payment request.
13. **INDEPENDENT CONTRACTOR.** The Services to be performed by Professional are those of an independent contractor and not of an employee of the City of Brighton. The City shall not be responsible for withholding any portion of Professional's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.
14. **INSPECTION.** The City, through its authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

15. **CHANGES.** The City may, from time to time, require changes in the Scope of the Work to be performed hereunder, which changes shall be agreed upon by the Parties in writing. In the event such changes cause an increase or decrease in the work to be performed by the Professional or the time for such performance, the compensation to be paid to the Professional and time of performance shall be equitably adjusted. The value of any such extra work or change shall be determined according to established hourly billing rate.
16. **SUSPENSION.** Without terminating this Agreement or breaching the obligations hereunder, the City may, at its sole discretion, suspend the Services of the Professional hereunder. Such suspension may be accomplished by giving the Professional written notice, which shall set forth the reasons for the suspension, seven (7) days in advance of the suspension date. Upon receipt of such notice, the Professional shall cease its work in as efficient a manner as possible in order to keep its total charges to the City for services under the Agreement to a minimum. In the event that the period of suspension exceeds ninety (90) days, either party may terminate this Agreement.
17. **PERSONAL SERVICES.** It is understood that the City enters into this Agreement based on the special abilities of the Professional and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Professional shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.
18. **ACCEPTANCE NOT WAIVER.** The City's approval of reports, and work or materials furnished hereunder, shall not in any way relieve the Professional of responsibility for the quality or technical accuracy of the work. The City's approval or acceptance of, or payment for, any part of the Services shall not be construed to operate as a waiver of any other rights or benefits provided to the City under this Agreement.
19. **DEFAULT.** Each and every term and condition hereof shall be deemed to be a material provision of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.
20. **REMEDIES.** In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy available at law or in equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall pay the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred in connection therewith.
21. **BINDING EFFECT/AMENDMENT.** This writing, together with all exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties. This Agreement may be amended only by the mutual consent of the parties in writing.

22. **LAW/SEVERABILITY.** The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

23. **ILLEGAL ALIENS.**

A. At all times during the performance of the contract, the Professional shall strictly adhere to all applicable Federal, State and City laws prohibiting the employment of or contracting with undocumented workers or illegal aliens.

B. The Professional shall not knowingly employ or contract with an undocumented worker or illegal alien to perform work under this Agreement or knowingly contract with a subcontractor who knowingly employs or contracts with undocumented workers (illegal aliens) to perform work under this Contract.

C. The Professional shall take affirmative action to insure that it does not employ or contract with undocumented workers or illegal aliens to perform work on this public contract for services with the City by participation in either of the following options:

OPTION 1-E-VERIFY PROGRAM

(1) Execute a Memorandum of Understanding with the Social Security Administration and Department of Homeland Security for participation in the E-Verify Program for the verification of immigration status of employees hired after the date of execution of the Memorandum of Understanding.

(2) Verify or attempt to verify through participation in the E-Verify Program that the Professional does not and will not employ undocumented workers or illegal aliens.

(3) The Professional shall comply with all terms and conditions of the Memorandum of Understanding related to the E-Verify Program, and in particular shall not use the process for verification of immigration status to verify and applicant employment eligibility; submit a request for verification until after the employee is hired and the Form I-9 is completed and submitted; or, to reverify employees hired prior to the date of the Memorandum of Understanding.

OPTION 2-STATE OF COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT PROGRAM ("DEPARTMENT PROGRAM")

(1) The Professional shall notify the Department and the City of Brighton of its intent to participate in the Department Program, and the Professional's consent in writing to the Department conducting random audits of the affidavits of the Professional filed with the City and the related documents maintained by the Professional.

(2) The Professional shall within twenty days after hiring new employees to perform work on this public contract for services with the City, filed with the Department an affidavit affirming that the Professional has examined the legal work status of such employees, retained file copies of the required documents related thereto, and has not altered or falsified the documents for such employees.

(3) The Professional shall provided a written, notarized copy of the affirmation to the City on or before its filing with the Department.

If the Professional has not entered in to a Memorandum of Understanding to participate in the E-Verify Program and is awarded the contract herein proposed, the Professional shall participate in the Department Program and comply with all requirements thereof during the term of the contract.

D. The Professional shall require all subcontractors of the Professional to certify in writing to the Professional that the subcontractor does not knowingly employ or contract with undocumented workers or illegal aliens and further to agree in writing not to knowingly employ or contract with an undocumented worker or illegal alien to perform work under this public contract for services.

(1) The Professional shall not enter into a contract with a subcontractor that fails to certify to the Professional that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

(2) If the Professional obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Professional shall:

(a) Notify the subcontractor and the City within three days that the Professional has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(b) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subsection D (2) (a), the subcontractor does not terminate the employment or contract with the illegal alien; except that the Professional shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

E. The Professional shall comply with any reasonable request by the City or the Colorado Department of Labor and Employment made in the course of an investigation that the City or the Department is undertaking for the purpose of determining the immigration status of all newly hired employees or contractors working on this Contract, including, but not limited to:

(1) Inspections and/or interviews at such locations as this Contract is being performed;

(2) Review documentation related to the immigration status and/or employment eligibility of any newly hired employees or contractors performing work on this public contract for services; or,

(3) Any other reasonable steps that are necessary to determine whether a Professional or subcontractor is complying with the provisions of this Contract related to the employment of or contracting with undocumented workers or illegal aliens.

F. The Professional shall, upon request, provide to the City copies of documentation and verification of immigration status and employment eligibility received by the Professional for itself or from subcontractors; and, if requested, copies of information received from a subcontractor submitted to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

G. If a Professional violates a provision of this Section 23, Illegal Aliens, the City may terminate the Contract for a breach of the Contract. If the Contract is so terminated, the Professional shall be liable for actual and consequential damages to the City.

24. INSURANCE

The Professional will be required to furnish a Certificate of Insurance including Professional Liability. The City will be named as Additional Insured on Commercial General Liability and Auto Liability policies and listing the name of the Project and project number if applicable.

- A. The Professional agrees to procure and maintain in full force and effect during the term of the Agreement, at its own cost, the following coverages:
 - 1. Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers' Liability Insurance.
 - 2. Commercial General or Business Liability Insurance with minimum combined single limits of One Million (\$1,000,000) each occurrence and One Million (\$1,000,000) general aggregate.
 - 3. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million (\$1,000,000) for any one occurrence, with respect to each of the Professional's owned, hired or non-owned vehicles assigned to or used in performance of the Services. In the event that the Consultant's insurance does not cover non-owned automobiles, then the Consultant guarantees to the City that the requirements of this paragraph shall be met by each employee, subcontractor or other agent of the Professional who utilizes an automobile in providing services to the City of Brighton under this Agreement.
 - 4. Errors and Omissions Insurance with limits of liability of at least One Million Dollars (\$1,000,000) per claim and in the aggregate.
- B. If approved by the City of Brighton prior to the commencement of any work or services under this Agreement, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.
- C. Professional shall procure and maintain, and shall cause any subcontractor of the Professional to procure and maintain, the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City of Brighton. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Professional in connection with providing any work or services under this Agreement. In the case of any claims made, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- D. A Certificate of Insurance shall be completed by the Professional's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City of Brighton prior to commencement of any work or services under this Agreement. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, until at least

thirty (30) days prior written notice has been given to the City of Brighton. The completed Certificate of Insurance shall be sent to:

City of Brighton
500 South 4th Avenue
Brighton, CO 80601
Attention: Sharon L. Williams, CPPB
Procurement & Contracts Manager

- E. Failure on the part of the Professional to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a Material Breach of Contract upon which the City of Brighton may immediately terminate this Agreement, or at its discretion the City of Brighton may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City of Brighton shall be repaid by the Professional to the City of Brighton upon demand, or the City of Brighton may offset the cost of the premiums against any monies due to Professional from the City of Brighton.
- F. The City of Brighton reserves the right to request and receive a copy of any endorsement required to comply with the above requirements. Professional agrees to execute any and all documents necessary to allow the City of Brighton access to endorsements pertaining to this particular Project.
- G. The parties hereto understand and agree that the City of Brighton, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to the City of Brighton, its officers or its employees.
- H. In addition to procuring and delivering to the City such written Certificates of Insurance, demonstrating that the Professional has obtained and will maintain all policies of insurance coverage in the amounts required herein, the Professional shall also cause the City to be named as an Additional Insured party entitled to coverage under the general liability and auto liability policies of insurance, and for that purpose the Professional shall obtain and maintain, or cause to be obtained and maintained, any and all necessary policy endorsements, additional coverage documents, or other instruments or Certificates, such as will provide such insurance coverage to the City at all times during the Professional's performance of the Project.
- I. All Certificates of Insurance shall be submitted on an Acord 25-S form or most current.

THE CITY OF BRIGHTON, COLORADO,
a home rule municipal corporation

BY: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, Esq.
City Attorney

White Sands Water Engineers, Inc.
a Colorado corporation

BY: Edward J. Armbruster

Edward J. Armbruster
Above Name Typed or Printed

TITLE: President

ATTEST:

[Signature]
Corporate Secretary

(Corporate Seal)



EXHIBIT "A"

SCOPE OF SERVICES

Engineering Services for Water Resources and Water Rights
Water Court Administrative Work and Surface Water Analysis

The Professional, being familiar with all of the requirements of this Agreement, shall furnish all labor, material, tools, equipment, transportation, services and all other things necessary for the completion of the Services in accordance with the requirements and intent of the Agreement documents within the time of completion as set forth herein.

The Engineering Services performed will be at Brighton's direction, on an 'as-needed' basis, and may be the result of requirements and recommendations from Brighton's staff or its water rights attorneys. The Services performed may be dependent upon how negotiations proceed between Brighton and other entities during existing and future Water Court cases. The Professional Services performed may include, but are not limited to, any of the following:

- Engineering analyses, studies, and reports to define and support water rights cases, either as the applicant or objector;
- Negotiations with objectors in existing and future Water Court cases where Brighton is the Applicant;
- Negotiations on Brighton's behalf in existing or future Water Court cases where Brighton participates as an objector;
- Negotiations on Brighton's behalf in connection with developing or refining Brighton's water supply through operational, intergovernmental, or other agreements with other entities;
- Engineering analyses, studies, and reports in support of existing or future Substitute Water Supply Plans;
- Engineering analyses, studies, and reports to project future water demands;
- Engineering analyses, studies, and reports to determine additional sources of water supply;
- Engineering analyses, studies, and reports to evaluate specific water rights, ditch company shares, or water supply projects offered for sale or lease to Brighton;
- Accounting forms to track and document Brighton's diversion, delivery, use, and returns of its water supplies;
- Trial preparation;
- Expert testimony at trial or depositions;
- Presentations at public meetings; and
- Presentations to Brighton's Council on water supply and water rights.

All of the Services are contingent upon the City's prior approval as set forth in Paragraph 8 of this Agreement